

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

ASUS COMPUTER INTERNATIONAL, et  
al.,

Plaintiffs,

v.

INTERDIGITAL, INC., et al.,

Defendants.

Case No. [15-cv-01716-BLF](#)

**OMNIBUS ORDER RE: SEALING  
MOTIONS AT ECF 258 AND ECF 290**

[Re: ECF 258, 290]

Before the Court are Defendants’ administrative motions to file under seal portions of their opposition brief and exhibits, and reply brief and exhibits, in connection with the parties’ motions for summary judgment. ECF 258, 290. For the reasons stated below, the motions are GRANTED IN PART and DENIED IN PART.

**I. LEGAL STANDARD**

“Historically, courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents.’” *Kamakana v. City & Cty. Of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 & n. 7 (1978)). Accordingly, when considering a sealing request, “a ‘strong presumption in favor of access’ is the starting point.” *Id.* (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). Parties seeking to seal judicial records relating to motions that are “more than tangentially related to the underlying cause of action” bear the burden of overcoming the presumption with “compelling reasons” that outweigh the general history of access and the public policies favoring disclosure. *Ctr. for Auto Safety v. Chrysler Grp.*, 809 F.3d 1092, 1099 (9th Cir. 2016); *Kamakana*, 447 F.3d at 1178–79.

However, “while protecting the public’s interest in access to the courts, we must remain

mindful of the parties’ right to access those same courts upon terms which will not unduly harm their competitive interest.” *Apple Inc. v. Samsung Elecs. Co., Ltd.*, 727 F.3d 1214, 1228–29 (Fed. Cir. 2013). Records attached to motions that are “not related, or only tangentially related, to the merits of a case” therefore are not subject to the strong presumption of access. *Ctr. for Auto Safety*, 809 F.3d at 1099; *see also Kamakana*, 447 F.3d at 1179 (“[T]he public has less of a need for access to court records attached only to non-dispositive motions because those documents are often unrelated, or only tangentially related, to the underlying cause of action.”). Parties moving to seal the documents attached to such motions must meet the lower “good cause” standard of Rule 26(c). *Kamakana*, 447 F.3d at 1179 (internal quotations and citations omitted). This standard requires a “particularized showing,” *id.*, that “specific prejudice or harm will result” if the information is disclosed. *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1210–11 (9th Cir. 2002); *see Fed. R. Civ. P. 26(c)*. “Broad allegations of harm, unsubstantiated by specific examples of articulated reasoning” will not suffice. *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992). A protective order sealing the documents during discovery may reflect the court’s previous determination that good cause exists to keep the documents sealed, *see Kamakana*, 447 F.3d at 1179–80, but a blanket protective order that allows the parties to designate confidential documents does not provide sufficient judicial scrutiny to determine whether each particular document should remain sealed. *See Civ. L.R. 79-5(d)(1)(A)* (“Reference to a stipulation or protective order that allows a party to designate certain documents as confidential is not sufficient to establish that a document, or portions thereof, are sealable.”).

In addition to making particularized showings of good cause, parties moving to seal documents must comply with the procedures established by Civ. L.R. 79-5. Pursuant to Civ. L.R. 79-5(b), a sealing order is appropriate only upon a request that establishes the document is “sealable,” or “privileged or protectable as a trade secret or otherwise entitled to protection under the law.” “The request must be narrowly tailored to seek sealing only of sealable material, and must conform with Civil L.R. 79-5(d).” Civ. L.R. 79-5(b). In part, Civ. L.R. 79-5(d) requires the submitting party to attach a “proposed order that is narrowly tailored to seal only the sealable material” which “lists in table format each document or portion thereof that is sought to be

sealed,” Civ. L.R. 79-5(d)(1)(b), and an “unredacted version of the document” that indicates “by highlighting or other clear method, the portions of the document that have been omitted from the redacted version.” Civ. L.R. 79-5(d)(1)(d). “Within 4 days of the filing of the Administrative Motion to File Under Seal, the Designating Party must file a declaration as required by subsection 79-5(d)(1)(A) establishing that all of the designated material is sealable.” Civ. L.R. 79-5(e)(1).

## II. DISCUSSION

The Court has reviewed Defendants’ sealing motions and the declarations of the designating parties submitted in support thereof. The Court finds that the parties have articulated compelling reasons to seal certain portions of the submitted documents. The proposed redactions are generally narrowly tailored. The Court’s rulings on the sealing requests are set forth in the tables below.

### A. ECF 258 (Defendants’ Motion as to Defendants’ Opposition and Exhibits)

<u>ECF No.</u>	<u>Document to be Sealed:</u>	<u>Result</u>	<u>Reasoning</u>
258-4	A: Opposition to Plaintiffs’ Motion for Summary Judgment	GRANTED as to highlighted portions.	Contains confidential information relating to the parties’ licensing agreements. Miller Decl. ¶ 5 at ECF 258-1. Disclosure of such information would harm Defendants. <i>Id.</i>
258-6	B: Declaration of Anne Layne-Farrar	GRANTED as to highlighted portions.	Contains confidential information relating to the parties’ licensing negotiation communications. Miller Decl. ¶ 6 at ECF 258-1. Disclosure of such information would harm Defendants. <i>Id.</i>
258-7	C: Excerpts from the deposition transcript of Jacky Lu, dated March 13, 2018	GRANTED.	Contains confidential information relating to the parties’ licensing negotiation communications. Miller Decl. ¶ 7 at ECF 258-1. Disclosure of such information would harm Defendants. <i>Id.</i>
258-8	D: Document produced by ASUS, bearing the production number ASUS_0149276	GRANTED.	Contains confidential information relating to the parties’ licensing agreements. Miller Decl. ¶ 8 at ECF 258-1. Disclosure of such information would harm

<u>ECF No.</u>	<u>Document to be Sealed:</u>	<u>Result</u>	<u>Reasoning</u>
			Defendants. <i>Id.</i>
258-9	E: Excerpts from the deposition transcript of Marvin Hsu, dated March 12, 2018	GRANTED.	Contains confidential information relating to Plaintiffs' business strategies, customer base, and competitive rationales. Weinberg Decl. ¶ 7, ECF 272. Disclosure of such information would cause harm to Plaintiffs, the designating party. <i>Id.</i>
258-10	F: Document produced by ASUS, bearing the production number ASUS_0008537	GRANTED.	Contains confidential information relating to Plaintiffs' license with a third party. Weinberg Decl. ¶ 8, ECF 272. Disclosure of such information would cause harm to Plaintiffs, the designating party. <i>Id.</i>
258-11	G: Document produced by ASUS, bearing the production number ASUS_0014106	GRANTED.	Contains confidential information relating to Plaintiffs' license with a third party. Weinberg Decl. ¶ 9, ECF 272. Disclosure of such information would cause harm to Plaintiffs, the designating party. <i>Id.</i>
258-13	H: Declaration of Bertram Huber	GRANTED as to highlighted portions.	Contains confidential information relating to the parties' licensing negotiation communications. Miller Decl. ¶ 12 at ECF 258-1. Disclosure of such information would harm Defendants. <i>Id.</i>
258-15	I: Declaration of Ranae McElvaine	GRANTED as to highlighted portions.	Contains confidential information relating to the parties' licensing negotiation communications. Miller Decl. ¶ 13 at ECF 258-1. Disclosure of such information would harm Defendants. <i>Id.</i>
258-17	J: Document produced by InterDigital, bearing the production number IDC-ASUS-1716-0196808	GRANTED as to highlighted portions.	Contains confidential information relating to the parties' licensing negotiation communications. Miller Decl. ¶ 14 at ECF 258-1. Disclosure of such information would harm Defendants. <i>Id.</i>

<u>ECF No.</u>	<u>Document to be Sealed:</u>	<u>Result</u>	<u>Reasoning</u>
258-19	K: Document produced by InterDigital, bearing the production number IDC-ASUS-1716-0108796	GRANTED as to highlighted portions.	Contains confidential information relating to the parties' licensing negotiation communications. Miller Decl. ¶ 15 at ECF 258-1. Disclosure of such information would harm Defendants. <i>Id.</i>
258-21	L: Document produced by InterDigital, bearing the production number IDC-ASUS-1716-0109274	GRANTED as to highlighted portions.	Contains confidential information relating to the parties' licensing negotiation communications. Miller Decl. ¶ 16 at ECF 258-1. Disclosure of such information would harm Defendants. <i>Id.</i>
258-22	M: Document produced by InterDigital, bearing the production number IDC-ASUS-1716-0110392	GRANTED.	Contains confidential information relating to the parties' licensing negotiation communications and highly sensitive royalty terms. Miller Decl. ¶ 17 at ECF 258-1. Disclosure of such information would harm Defendants. <i>Id.</i>
258-23	N: Document produced by InterDigital, bearing the production number IDC-ASUS-1716-0108736	GRANTED.	Contains confidential information relating to the parties' licensing negotiation communications and highly sensitive royalty terms. Miller Decl. ¶ 18 at ECF 258-1. Disclosure of such information would harm Defendants. <i>Id.</i>
258-25	O: Document produced by InterDigital, bearing the production number IDC-ASUS-1716-0113584	GRANTED as to highlighted portions.	Contains confidential information relating to the parties' licensing negotiation communications and highly sensitive royalty terms. Miller Decl. ¶ 19 at ECF 258-1. Disclosure of such information would harm Defendants. <i>Id.</i>
258-27	P: Document produced by InterDigital, bearing the production number IDC-ASUS-1716-0114692	GRANTED as to highlighted portions.	Contains confidential information relating to the parties' licensing negotiation communications and highly sensitive royalty terms. Miller Decl. ¶ 20 at ECF 258-1. Disclosure of such information would harm Defendants. <i>Id.</i>
258-29	Q: Document produced by InterDigital, bearing the production number	GRANTED as to highlighted portions.	Contains confidential information relating to the parties' licensing negotiation communications and

<u>ECF No.</u>	<u>Document to be Sealed:</u>	<u>Result</u>	<u>Reasoning</u>
	IDC-ASUS-1716-0110741		highly sensitive royalty terms. Miller Decl. ¶ 21 at ECF 258-1. Disclosure of such information would harm Defendants. <i>Id.</i>
258-30	R: Document produced by InterDigital, bearing the production number IDC-ASUS-1716-0117560	GRANTED.	Contains confidential information relating to the parties' licensing negotiation communications and highly sensitive royalty terms. Miller Decl. ¶ 22 at ECF 258-1. Disclosure of such information would harm Defendants. <i>Id.</i>
258-31	S: Document produced by InterDigital, bearing the production number IDC-ASUS-1716-0117576	GRANTED.	Contains confidential information relating to the parties' licensing negotiation communications and highly sensitive royalty terms. Miller Decl. ¶ 23 at ECF 258-1. Disclosure of such information would harm Defendants. <i>Id.</i>
258-33	T: Document produced by InterDigital, bearing the production number IDC-ASUS-1716-0117586	GRANTED as to highlighted portions.	Contains confidential information relating to the parties' licensing negotiation communications. Miller Decl. ¶ 24 at ECF 258-1. Disclosure of such information would harm Defendants. <i>Id.</i>
258-34	U: Document produced by InterDigital, bearing the production number IDC-ASUS-1716-0121582	GRANTED.	Contains confidential information relating to the parties' licensing negotiation communications and highly sensitive royalty terms. Miller Decl. ¶ 25 at ECF 258-1. Disclosure of such information would harm Defendants. <i>Id.</i>
258-35	V: Document produced by InterDigital, bearing the production number IDC-ASUS-1716-0234044	GRANTED.	Contains confidential information relating to the parties' licensing negotiation communications. Miller Decl. ¶ 26 at ECF 258-1. Disclosure of such information would harm Defendants. <i>Id.</i>
258-36	W: Document produced by InterDigital, bearing the production number IDC-ASUS-1716-0236040	GRANTED.	Contains confidential information relating to the parties' licensing negotiation communications. Miller Decl. ¶ 27 at ECF 258-1. Disclosure of such information would harm Defendants. <i>Id.</i>

<u>ECF No.</u>	<u>Document to be Sealed:</u>	<u>Result</u>	<u>Reasoning</u>
258-37	X: Document produced by InterDigital, bearing the production number IDC-ASUS-1716-0333364	GRANTED.	Contains confidential information relating to the parties' licensing negotiation communications. Miller Decl. ¶ 28 at ECF 258-1. Disclosure of such information would harm Defendants. <i>Id.</i>
258-38	Y: Document produced by InterDigital, bearing the production number IDC-ASUS-1716-0336753	GRANTED.	Contains confidential information relating to the parties' licensing negotiation communications and highly sensitive royalty terms. Miller Decl. ¶ 29 at ECF 258-1. Disclosure of such information would harm Defendants. <i>Id.</i>
258-39	Z: Document produced by InterDigital, bearing the production number IDC-ASUS-1716-0336749	GRANTED.	Contains confidential information relating to the parties' licensing negotiation communications and highly sensitive royalty terms. Miller Decl. ¶ 30 at ECF 258-1. Disclosure of such information would harm Defendants. <i>Id.</i>
258-40	AA: Email from IDC's Counsel to ASUS's counsel, dated April 4, 2018	GRANTED.	Contains confidential information relating to Defendants' licensing practices. Miller Decl. ¶ 31 at ECF 258-1. Disclosure of such information would harm Defendants. <i>Id.</i>
258-42	BB: Declaration of William J. Merritt	GRANTED as to highlighted portions.	Contains confidential information relating to the parties' licensing negotiation communications and highly sensitive royalty terms. Miller Decl. ¶ 32 at ECF 258-1. Disclosure of such information would harm Defendants. <i>Id.</i>
258-43	CC: Document produced by InterDigital, bearing the production number IDC-ASUS-1716-0202010	GRANTED.	Contains confidential information relating to Defendants' highly sensitive business information, including terms of a license with a third party. Miller Decl. ¶ 33 at ECF 258-1. Disclosure of such information would harm Defendants. <i>Id.</i>
258-44	DD: Document produced by InterDigital, bearing	GRANTED.	Contains confidential information relating to Defendants' highly



<u>ECF No.</u>	<u>Document to be Sealed:</u>	<u>Result</u>	<u>Reasoning</u>
	the production number IDC-ASUS-1716-0217716		sensitive business information, including terms of a license with a third party. Miller Decl. ¶ 34 at ECF 258-1. Disclosure of such information would harm Defendants. <i>Id.</i>
258-45	EE: Document produced by InterDigital, bearing the production number IDC-ASUS-1716-0268770	GRANTED.	Contains confidential information relating to Defendants' highly sensitive business information, including terms of a license with a third party. Miller Decl. ¶ 35 at ECF 258-1. Disclosure of such information would harm Defendants. <i>Id.</i>
258-46	FF: Document produced by InterDigital, bearing the production number IDC-ASUS-1716-0324555	GRANTED.	Contains confidential information relating to Defendants' highly sensitive business information, including terms of a license with a third party. Miller Decl. ¶ 36 at ECF 258-1. Disclosure of such information would harm Defendants. <i>Id.</i>
258-48	GG: Declaration of Jorge Padilla	GRANTED as to highlighted portions.	Contains confidential information relating to the parties' licensing negotiation communications. Miller Decl. ¶ 37 at ECF 258-1. Disclosure of such information would harm Defendants. <i>Id.</i>
258-49	HH: Excerpts from the deposition transcript of Marvin Hsu, dated March 12, 2018	GRANTED.	Contains confidential information relating to Plaintiffs' business strategies, customer base, and competitive rationales. Weinberg Decl. ¶ 11, ECF 272. Disclosure of such information would cause harm to Plaintiffs, the designating party. <i>Id.</i>
258-51	II: Declaration of Dr. Jonathan D. Putnam	GRANTED as to highlighted portions.	Contains confidential information relating to the parties' licensing negotiation communications. Miller Decl. ¶ 39 at ECF 258-1. Disclosure of such information would harm Defendants. <i>Id.</i>
258-52	JJ: Excerpts from the	GRANTED.	Contains confidential information



<u>ECF No.</u>	<u>Document to be Sealed:</u>	<u>Result</u>	<u>Reasoning</u>
	Expert Report of Dr. Gregory K. Leonard		relating to Defendants' highly sensitive business information, including terms of licenses with third parties. Miller Decl. ¶ 40 at ECF 258-1. Disclosure of such information would harm Defendants. <i>Id.</i>
258-53	KK: Excerpts from Plaintiffs' Supplemental Responses to Defendants' First Set of Interrogatories	GRANTED.	Contains confidential information relating to Defendants' highly confidential business information. Miller Decl. ¶ 41 at ECF 258-1. Disclosure of such information would harm Defendants. <i>Id.</i>
258-54	LL: Excerpts from the deposition transcript of Philippe Stoffel-Munck, Ph.D., dated July 14, 2018	DENIED.	Plaintiffs, the designating party, do not seek to seal the document. Weinberg Decl. ¶ 13, ECF 272.

**B. ECF 290 (Defendants' Motion as to Defendants' Reply and Exhibits)**

<u>ECF No.</u>	<u>Document to be Sealed:</u>	<u>Result</u>	<u>Reasoning</u>
290-4	A: Reply In Support of Motion for Summary Judgment	GRANTED as to highlighted portions.	Contains confidential information relating to the parties' licensing negotiation communications. Miller Decl. ¶ 5 at ECF 290-1. Disclosure of such information would harm Defendants. <i>Id.</i>
290-5	B: Excerpts from the transcript of the May 12, 2016 Arbitration Hearing	GRANTED.	Contains confidential information relating to the parties' arbitration proceedings. Miller Decl. ¶ 6 at ECF 290-1. Disclosure of such information would harm Defendants. <i>Id.</i>
290-6	C: Excerpts from ASUS's Application to Dismiss All Claims and Counterclaims for Lack of Jurisdiction	GRANTED.	Contains confidential information relating to the parties' negotiation history and arbitration proceedings. Miller Decl. ¶ 7 at ECF 290-1. Disclosure of such information would harm Defendants. <i>Id.</i>

<u>ECF No.</u>	<u>Document to be Sealed:</u>	<u>Result</u>	<u>Reasoning</u>
290-7	D: Excerpts from the deposition transcript of ASUS's expert Fiona M. Scott Morton, dated July 9, 2018	GRANTED.	Contains confidential information relating to the parties' licensing agreement. Miller Decl. ¶ 8 at ECF 290-1. Disclosure of such information would harm Defendants. <i>Id.</i>
290-8	E: Chart with excerpts of opinions submitted by ASUS's experts	GRANTED.	Contains confidential information relating to the parties' licensing negotiation communications. Miller Decl. ¶ 9 at ECF 290-1. Disclosure of such information would harm Defendants. <i>Id.</i>
290-9	F: Excerpts from the Corrected Expert Witness Statement of Matthew R. Lynde, dated January 5, 2017	GRANTED.	Contains confidential information relating to the parties' licensing negotiation communications. Miller Decl. ¶ 10 at ECF 290-1. Disclosure of such information would harm Defendants. <i>Id.</i>
290-10	G: Excerpts from the deposition transcript of ASUS's expert Apostolos K. Kakaes, dated July 13, 2018	DENIED.	Plaintiffs, the designating party, do not seek to seal the document. Weinberg Decl. ¶ 6, ECF 300.
290-11	H: Excerpts from the Corrected Rebuttal Expert Witness Statement of Jonathan D. Putnam, dated December 22, 2016	GRANTED.	Contains confidential information relating to the parties' licensing negotiation communications. Miller Decl. ¶ 12 at ECF 290-1. Disclosure of such information would harm Defendants. <i>Id.</i>
290-12	I: Excerpts from the Expert Report of Apostolos K. "Paul" Kakaes	DENIED.	Plaintiffs, the designating party, do not seek to seal the document. Weinberg Decl. ¶ 7, ECF 300.

### III. ORDER

For the foregoing reasons, Defendants' motion at ECF 258 is GRANTED IN PART and DENIED IN PART. Defendants' motion at ECF 290 is GRANTED IN PART and DENIED IN PART. For any request that has been denied, if the designating party has not already publicly submitted the properly redacted version of the documents, the submitting party must file the unredacted (or lesser redacted) documents into the public record no earlier than 4 days and no later

than 10 days from the filing of this order. *See* Civ. L.R. 79-5(e)(2).

**IT IS SO ORDERED.**

Dated: October 11, 2018

A handwritten signature in black ink, reading "Beth Labson Freeman", written over a horizontal line.

BETH LABSON FREEMAN  
United States District Judge